

August 18, 2008

Julie Klein Cutler
Administrator, Office of Anti-Discrimination
Division of Industrial Affairs
Department of Labor
4425 N. Market Street
Wilmington, DE 19802

RE: DOL Prop. Emp. Discrimination Complaint Processing Reg. [12 DE Reg. 158 (August 1, 2008)]

Dear Ms. Klein Cutler,

The Developmental Disabilities Council understands that the Department of Labor proposes to adopt standards for the processing of complaints of employment discrimination by its Office of Anti-Discrimination. The standards include procedural standards applicable to complaints of employment discrimination based on disability.

In general, the proposed regulations are comprehensive and logical. We offer only a few observations and recommendations.

First, it appears that a complaint can only be filed in person at the DOL office in Wilmington or Milford. See Sections 2.3.1 and 2.4.1 and attached Delaware DOL website Q&A entitled “How to File a Charge of Employment”. Although this may promote “better” complaints by pro se applicants, a categorical requirement that an applicant appear in person to fill out the complaint is ostensibly too rigid. In contrast, an aggrieved party can file an employment discrimination complaint with the federal EEOC without a personal appearance. Moreover, the EEOC posts its “intake questionnaire” on its website which can be filled out in question and answer format on-line. See attachments. The Delaware DOL does not post its interview questionnaire or complaint form on its website. Thus, an aggrieved party could easily appear at a DOL office to file a complaint without important information. We recommend: 1) the DOL amend its proposed regulation to allow the filing of a complaint without a personal appearance under certain circumstances (e.g. filing by attorney) and 2) provide more complaint-related information (e.g. forms; interview questionnaire) on its website.

Second, Section 3.1.3 authorizes an ex parte application for an extension of time to file an answer. It would be preferable to adopt the following amendment: “A request for extension of time shall be in writing and addressed to the administrator *with a copy to the charging party.*” Compare Section 9.2.1 for an analog.

Third, Section 3.2.3.4 authorizes the redaction of the “identity of witnesses respondent intends to produce” from its answer served on the charging party”. We do not understand the rationale for such an exclusion. The other exclusions (Sections 3.2.3.1 - 3.2.3.3) relate to confidential trade secrets or privacy rights of other employees. There is no analogous privacy interest in a witness list submitted to the DOL.

The Developmental Disabilities Council thanks you in advance for your consideration of our remarks. Should you have any questions regarding these please contact our office at 739-3333.

Sincerely,

Jamie Wolfe
Chair

cc. State Council for Persons with Disabilities
Governor’s Advisory Council for Exceptional Citizens